IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

CRL.A.No. 2159 of 2006()

AGAINST THE ORDER IN CRLP.524/2006 Dated 13/10/2006
CC.1227/2003 of JUDL.MAGISTRATE OF FIRST CLASS, KARUNAGAPPALLY

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APPELLANT: COMPLAINANT

ASHOK KUMAR,
ASWATHY BHAVAN, NEDUVILAKKARA,
THEVALAKKARA.

BY ADV. SRI.BRIJESH MOHAN

RESPONDENTS: STATE/ACCUSED

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. MADHAVAN, S/O. NARAYANAN,
BINDHU BHAVAN, EDAKKULANGARA P.O.,
KARUNAGAPPALLY.

BY PUBLIC PROSECUTOR SRI.THOMAS JOHN AMBOOKAN.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No. 2159 of 2006

Dated this the 13th February, 2007.

J U D G M E N T

The complainant in C.C.No.1227/2003, on the file of the Judicial First Class Magistrate Court, Karunagappally, is the appellant. The complaint was dismissed, as the complainant was absent, when the case was taken up by the court below. Hence this appeal after obtaining leave of this Court. The learned Magistrate has noted that from 6.6.2005 onwards, the case was posted on different dates, and the appellant was not prepared to adduce evidence. Counsel for the appellant, however, submits that the appellant was always available before the court below, and though the complaint was filed in the year 2003, the accused appeared only in the year 2005. The appellant could not be present on few days, because of various inconveniences, and due to the absence of the counsel concerned in representing the matter before the court below.

2. Admittedly, the complaint had been filed in the year 2003. A litigant will get disgusted, even after repeated postings, if the court below is not able to bring the accused under law. If the

appellant, as complainant, is not available for trial on few days, that alone need not be considered as a ground for dismissal. The basic point to be considered is whether the presence of the complainant is necessary for proceeding with the matter. When a case is pending for long, it is obvious that the parties may loose interest. In such situation, the court will have to take into consideration all the attenuating circumstances.

3. Though the notice is served on the second respondent, accused, there is no representation. I heard the arguments advanced by the learned counsel for the appellant, complainant. I am of the opinion that an opportunity be given to the parties to agitate the matter before the court below.

4. Hence, I set aside the impugned order, dated, 29.6.2006, and restore C.C.No.1227/2003, to the file of the Judicial First Class Magistrate Court, Karunagappally.

5. The parties shall appear before the court below on 19.3.2007.

6. The learned Magistrate shall dispose of the matter, at the earliest, and in any case, within three months from the date of appearance of the parties.

Criminal Appeal is allowed as above.

J.M. JAMES,
JUDGE

nj.